



Legislative priorities for 2008

A preview of some of the areas ripe for reform



Magar

MICHELE MAGAR

As legislators return to Sacramento for the start of the new session, civil rights and consumer advocates are preparing legislative goals for 2008. This column previews some of the areas ripe for reform.

Subprime lending reforms and relief for homeowners

The dramatic increase in foreclosures stemming from predatory mortgage loans may finally prompt enactment of sorely needed protections for the nearly 500,000 homeowners whose subprime loans will soon reset at dramatically higher amounts. Governor Arnold Schwarzenegger has launched a \$1.2 million public awareness campaign to persuade distressed homeowners to contact their lenders before facing foreclosure, obtain counseling, and avail themselves of other services. The Governor also obtained agreements from loan servicers from Countrywide, GMAC, Litton and HomeEq – which service a quarter of the state’s subprime borrowers – to streamline “fast-track” procedures to help keep subprime borrowers in their homes.

Local leaders have also appealed to subprime lenders. The mayors of San Francisco and Los Angeles are calling on lenders to contact subprime borrowers to offer relief well before their interest rates reset.

Legislators have also pledged action. As *Plaintiff Magazine* goes to press, Governor Schwarzenegger has not yet responded to a request from Assembly Speaker Fabian Nunez and other top Democratic legislators to convene a special session in December to enable lawmakers to pass reforms that would become effective the following month. If the Governor doesn’t act, bills considered during the regular legislative session that begins in January will require a two-thirds vote in each house to become effective before 2009 – a tall order, given the large campaign contributions made by lenders.

“Subprime lenders have taken the American dream of homeownership and turned it into a foreclosure nightmare,” said Assembly Judiciary Chair Dave Jones. To help current homeowners, Assembly Democrats hope to enact legislation that would:

- require lenders to develop a standardized, systematic procedure to modify loans. A recent study found that lenders have granted only one percent of loan modification requests to date, a rate so dismal that only a minority of homeowners on the verge of foreclosure bother calling their lender for help.
- require lenders to notify mortgage counseling agencies when they file notices of default. Lenders would also be required to include a list of homeowner foreclosure rights when they send delinquent homeowners notices of default and foreclosure,



- require lenders to submit monthly reports to the state about their contacts with troubled homeowners, and the actions lenders took in response,

- require foreclosure consultants to register with the state – an effort to discourage foreclosure rescue scams, which continue to proliferate as the number of foreclosures soars,

- require subprime lenders to hire ombudsmen to help borrowers negotiate for relief.

- provide \$10 million to fund 100 more housing counselors.

Assembly Democrats have also created a Web site to provide information and guide homeowners to counselors and other types of assistance (<http://adc.asm.ca.gov/issues/Mortgage-Crisis>).

To protect future borrowers from falling victim to predatory lenders, Democratic legislators plan to introduce legislation that would 1) ban kickbacks that encourage brokers to place borrowers in subprime loans, 2) ban negative amortization loans, which allow homeowners to increase their debt by paying less than the full amount of interest due, 3) ban loans that don't require documentation of income and assets, 4) require lenders to consider a loan applicant's ability to repay throughout the life of the loan, rather than during the initial teaser rates, and 5) require applicants for high-priced loans to receive counseling before closing.

Ted Lieu, who chairs the Assembly Banking and Finance Committee, emphasized the need for immediate action. "We are in an accelerating and exploding crisis," said Lieu, who warned that delay would only make the problem harder to address. He criticized Governor Schwarzenegger's effort to get lenders to temporarily freeze interest rates, saying that such a move was inadequate and would only be "delaying the day of reckoning."

Beth Willon, press secretary for Nunez, said requiring translation of basic mortgage terms for loan applicants with

limited English proficiency (AB 512) was also high on the list of legislative priorities. For more information about AB 512, and to learn about reforms enacted by other states to address the subprime mortgage crisis, please see the *Public Interest Forum* published in the October, 2007, issue of *Plaintiff Magazine*.

Disability rights

Other civil rights priorities for the 2008 legislative session include the restoration of \$55 million for housing and support services for people diagnosed as having severe mental illness, originally authorized in Assembly Bill 2034 in 2000. Governor Schwarzenegger used a line item veto to kill the program in 2007, despite its proven track record in reducing homelessness, incarceration and hospitalization of persons diagnosed with severe mental illness.

Disability rights attorneys say the Governor's veto violates Section 5891 of the Welfare and Institutions Code. Enacted under Proposition 63 (the Mental Health Services Act), that law requires the state to "continue to provide financial support for mental health programs with not less than the same entitlements, amounts of allocations from the General Fund and formula distributions of dedicated funds as provided in the last fiscal year which ended prior to the effective date of this Act."

"This program has been a lifesaver for thousands of people, providing housing and employment opportunities in addition to mental health treatment and other supportive services," said Kim Lewis, an attorney with the Western Center on Law & Poverty in Los Angeles. "The state will ultimately spend much more money if these people are hospitalized or end up in jail." The Western Center, Protection & Advocacy, Inc., and other advocacy organizations have threatened a lawsuit if the funds are not restored.

Another disability rights priority for the new year is enactment of protections regarding the use of seclusion and re-

straints in California elementary, middle and high schools. A 2007 report by Protection & Advocacy, Inc. entitled, *Restraint and Seclusion in California Schools: A Failing Grade* (<http://www.pai-ca.org/pubs/702301.pdf>) revealed a pattern of abuse directed against students with disabilities, where "restraint and seclusion became routine classroom events. . . in lieu of developing or modifying individualized positive behavior plans based upon a thorough assessment of the student."

The report cited specific instances of abuse to underscore the need for reform. Examples included a 10-year-old boy with physical and cognitive disabilities, who was tied to his wheelchair and left on the school van on two separate days, and middle school students who were secluded every day – sometimes for the entire day – for incomplete work assignments and for disobeying adults. The report found that several students "sustained physical injuries stemming from improper restraint techniques. Others were psychologically traumatized by incidents of seclusion."

The report recommended reforms to "ensure that the use of restraint and seclusion is scrutinized and limited to only the most imminently dangerous behaviors" and urged the reduction and eventual elimination of restraint and seclusion.

Employment discrimination protections in the wake of *Ledbetter*

Workplace protections are also high on the list of civil rights priorities for 2008. Assembly Bill 437 (Jones) would protect California against the Supreme Court's May 29, 2007, ruling in *Ledbetter v. Goodyear Tire & Rubber Co.* (2007) [127 S. Ct. 2162]. In *Ledbetter*, a razor-thin 5-4 majority overruled decades of precedent by finding that discriminatory paychecks do not constitute new instances of discrimination sufficient to toll the 180-day statute of limitations provided under Title VII of the 1964 Civil Rights Act.



JANUARY 2008

Lilly Ledbetter had discovered that she was paid significantly less than men with the same responsibilities after having worked for Goodyear Tire & Rubber Company for 20 years. She promptly filed a complaint with the Equal Employment Opportunity Commission, and the case proceeded to trial. Her jury found the pay difference was due to sex discrimination. However, the Supreme Court ruled that although she filed her complaint promptly after learning about the pay differential, she could not prove that the decision to pay her less than male workers with equivalent job duties had occurred within 180 days.

The decision moved Justice Ruth Bader Ginsburg to read her dissent from the bench, an unusual practice meant to express her strong disapproval. Ginsburg's dissent charged that the majority failed to consider how pay discrimination surfaces. "Pay disparities often occur, as they did in Ledbetter's case, in small increments; only over time is there strong cause to suspect that discrimination is at work," Ginsburg wrote.

Assembly Bill 437 (Jones) would ensure that *Ledbetter* does not weaken protections under California's Fair Employment and Housing Act (Gov. Code, §§ 12900 *et seq.*). It states that discrimination and labor code violation claims exist when an employee "is affected by the application of a compensation decision or other practice, including each time when wages, benefits, or other compensation is paid."

Although AB 437 was passed by wide margins in both the Assembly and the Senate, it was held back for fear of attracting a veto from Governor Schwarzenegger. The bill faces strong opposition from the California Chamber of Commerce and the business community. Advocates hope a similar bill pending in Congress will succeed this year, and provide political cover for the Governor's approval of AB 437.

Advocates will try once again to enact another worker protection bill that

also enjoyed broad support from both houses of the legislature in 2007 before the Governor vetoed it. Senate Bill 836 (Kuehl) would bar employers from discriminating against workers who care for "a child, a parent, a spouse, a domestic partner, a parent-in-law, a sibling, a grandparent, or a grandchild."

The Assembly Committee analysis of the bill stated that such protection was needed to address cases such as *Tisinger v. City of Bakersfield* 2002 WL 275525 (not officially published), in which a single father with 13 years of experience as a firefighter was passed over for captain because of his family responsibilities. The court denied Derek Tisinger's claim of marital status discrimination under the Fair Employment and Housing Act, because he could not prove the discrimination was caused by his marital status, rather than his status as a parent.

Governor Schwarzenegger's October 13, 2007, veto message said that Senate Bill 836 would "not only result in endless litigation to try and define what discrimination on the basis of 'familial status' means, it will also unnecessarily restrict employers' ability to make personnel decisions."

Access to court translators for civil litigants

Civil rights advocates hope to enact legislation to increase access to justice for the nearly seven million Californians who need translators to use the courts for civil matters. Current law requires translators for non-English speaking defendants and witnesses in criminal cases. (Cal. Const., Art. I, section 14.)

Governor Schwarzenegger vetoed a similar measure (AB 2302) last year. Although his veto message stated that it was "essential to provide non-English speaking litigants with interpreters in order to provide meaningful access to our justice system," Schwarzenegger said California could not afford to spend the funds required to provide translators for civil litigants. The current bill, Assembly

Bill 1726 (Jones, Evans, Feuer, Krekorian, Laird, Levine, and Lieber) attempts to address the Governor's budget concern by establishing an order of priority for translator services if there is not enough funding available to serve all non-English speaking civil litigants.

The Judicial Council supports the current bill, as well as last year's version. The Council has stated that the lack of interpreter services "jeopardizes the court's ability to identify the crucial issues that guide the determination in a case . . . [and has] enormous consequences for litigants: in domestic violence cases, respondents do not understand the orders entered against them and all too often violate them; single parents are unable to obtain adequate child support awards and must go on public assistance; and extended family members are unable to obtain guardianships, which would allow them to care for children who otherwise are placed into foster care or juvenile hall."

Protections for LGBT youth

Civil rights advocates hope to build on their successful effort last year to enact protections for lesbian, gay, bisexual, and transgender youth who are incarcerated in state facilities. In 2008, advocates will attempt to persuade legislators to extend the same protections for youth in county correctional facilities.

"One in four kids under the age of 18 who come out to their families are kicked out of their home," said Geoff Kors, executive director of Equality California. "More than 40 percent of homeless kids are LGTB youth and many end up in the criminal justice system."

Senate Bill 518 (Migden), which was signed by the Governor on October 13, 2007, provides a broad bill of rights for incarcerated youth in state facilities. Included is the right to "fair and equal access to all available services, placement, care, treatment, and benefits, and to not be subjected to discrimination or harassment on the basis of actual or perceived



JANUARY 2008

race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status.”

Immigrant rights

Another area ripe for reform stems from the recent wildfires in southern California. The American Civil Liberties Union and immigrant rights groups issued a report entitled *Firestorm: Treatment of Vulnerable Populations During the San Diego Fires* (http://www.aclusandiego.org/news_item.php?article_id=000326) which documented instances in which San Diego Police turned over to the U.S. Border Patrol undocumented immigrants who had sought shelter in Qualcomm Stadium and had allegedly taken more than their share of relief supplies. Seven family members, including a two-year-old U.S. citizen and an eight-year-old and 13-year-old were deported. According to an ACLU press release, the incident “sparked fear in immigrant communities and preceded a rash of mis-

guided, aggressive enforcement by police and Sheriff’s deputies at evacuation centers.”

Andrea Guerrero, field and policy director for the ACLU of San Diego and Imperial County, was one of the people forced to seek shelter from the fires. She said she witnessed several incidents of police harassment of people of color. “I was ashamed of my city, and ashamed of its police force,” Guerrero said.

The report found that police officers ejected people from Qualcomm Stadium who could not provide ID to show they were from an area affected by the fires. “Fifty percent of the fires were still burning and people were still evacuating when they began to check IDs,” Guerrero said. “Their action also affected homeless people, residents who didn’t have time to grab proof of identity, and single mothers whose utility bills were addressed to and paid by others.”

The report also revealed that the reverse 911 calling system, which was used to notify people of evacuation orders, de-

livered messages in English, despite the fact that 30 percent of the San Diego County population is Latino and that “available technology could have easily accommodated other languages.”

The report called for the immediate cessation of identity checks in the disbursement of emergency shelter, food, water and other supplies during a disaster, as well as cessation of immigration enforcement at emergency service centers.

Guerrero said that advocates were awaiting a report by the mayor of San Diego before deciding whether reforms required legislation or could be met by changes in local, state and federal policy.

Michele Magar is a civil rights attorney and journalist based in San Francisco. She welcomes comments and ideas for future columns. Readers may reach her at PublicInterestForum@plaintiffmagazine.com

